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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,459	08/14/2006	Andrew Michael Halliday	1410-67681	7180
48940 7590 08/17/2010 FITCH EVEN TABIN & FLANNERY 120 SOUTH LASALLE STREET SUITE 1600 CHICAGO, IL 60603-3406				
EXAMINER ATKISSON, JIANYING CUI				
ART UNIT 3742		PAPER NUMBER		
MAIL DATE 08/17/2010		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/589,459

Applicant(s)

HALLIDAY ET AL.

Examiner

JIANYING ATKISSON

Art Unit

3742

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) 36-51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The response filed on 6/16/10 is acknowledged. Applicants affirmed the provisional election of Group I, claims 1-35, without traverse. Claims 36-51 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse as set forth. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burrows et al. (US 6,634,281), hereafter Burrows, and in view of Cai (US 7,032,503).

Regarding claims 1, 12-13, Burrows teaches an insert (12) for use in a beverage preparation machine (10) of a type comprising a brew head (28) suitable for receiving a rigid or semi-rigid cartridge (cavity 32 can receive cartridge), the brew head comprising an upwardly directed inlet (62) for supplying water to the brew head, a downwardly directed outlet (79) for outflow of beverage produced by the machine, the insert comprising an upper part (cap 77), a lower part (12), the upper and lower parts being moveable between an open configuration in which a quantity of beverage ingredients

may be loaded into the insert and a closed configuration in which the upper and lower parts are closed to define therebetween a brewing volume containing, in use, the quantity of beverage ingredients, the lower part comprising an inlet (64) and an outlet (holes on mash 78) arranged to communicate respectively with the upwardly directed inlet (62) and the downwardly directed outlet (79) of the brew head of the beverage preparation machine when the insert is inserted into the machine such that, in use, water from the inlet of the brew head passes upwardly through the inlet of the insert into the brewing volume and such that beverage produced from the water and the quantity of beverage ingredients passes downwardly through the outlet of the insert to flow out of the downwardly directed outlet of the brew head (col. 5, lines 49-54, col. 6, lines 58-62).

Burrows does not teach explicitly a sealing means to seal the upper and lower parts when they are closed to form the brewing chamber; or the sealing means comprises a ring seal or an O-ring for sealing around a periphery of the brewing volume.

In the same field of endeavor of beverage brewing machine, Cai teaches a sealing means (a ring seal 25 or O-ring 16) used to form airtight seal for a brewing chamber (col. 3, lines 12-14).

Thus it would have been obvious to a person of ordinary skill in the art at the time of invention to use **in Burrows** the ring seal or O-ring **as taught by Cai** between the basket 12 and the cap 77 **in order to** form airtight connection there-between thus to ensure no hot steam escapes outside to burn the user.

Regarding claim 2, Burrows teaches that the insert as claimed in claim 1 wherein the quantity of beverage ingredients (ground coffee) loaded in use into the receptacle are loose (ground coffee is loose).

Regarding claim 3, Burrows teaches that the insert as claimed in claim 2 wherein the insert comprises filtering means (78) between the brewing volume and the outlet of the insert.

Regarding claim 4-9, Burrows teaches the limitations of claim 1, but does not teach explicitly that the insert as claimed in claim 1 wherein the quantity of beverage ingredients loaded in use into the receptacle are contained in a container comprising filtering means (*Regarding claim 4*); or that the insert as claimed in claim 4 wherein the container is flexible (*Regarding claim 5*); or the container is formed at least in part from a filtering membrane (*Regarding claim 6*); or the container is a filter bag (*Regarding claim 7*); or the container is a rigid or semi-rigid cartridge (*Regarding claims 8-9*).

However since Burrow teaches a beverage machine with brewing head and brewing basket, thus it would have been obvious to a person of ordinary skill in the art at the time of invention to insert a rigid or semi-rigid cartridge or any other type of filter (filter bag, flexible filter, filtering membrane, etc) of any of semi-spherical, cylindrical, round or square in shape in the brewing basket to make beverages, since prepacked cartridges can contain a pre-determined dose of coffee and different filter means are suitable for making different kinds of coffee.

Regarding claims 10-11, Burrows in view of Cai teaches that the insert as claimed in claim 9, wherein the sealing means (16) is located on or in an upper part or the lower part of the insert (Figs. 1-2 of Cai).

Regarding claim 14, it is well known that O-rings are commonly made from an elastomeric material.

Regarding claim 15, Burrows in view of Cai teaches that the insert as claimed in claim 14, wherein the upper part and the lower part are disconnected from one another (Fig. 6 of Burrows).

Regarding claims 16 and 17, Burrows teaches the limitations of claim 15, but does not teach that the upper part and lower part comprise co-operating formations to permit snap-fitting together of the upper part and lower part; or the upper part and lower part are joined by a hinge allowing the upper and lower parts to move between the open and closed configurations.

However it is well known that snap-fitting is a commonly used means to fit a cap to a receptacle to form a closed chamber, and a hinge is commonly used to open and close a lid; thus it would have been obvious to a person of ordinary skill in the art at the time of invention to include co-operating formations or hinge means to permit snap-fitting together of the cap 77 and the receptacle 12 to form an enclosed brewing chamber, or close and open the cap through the hinge means.

Regarding claims 18-19, Burrows teaches the limitations of claim 17, Burrows also teaches a closure mechanism of the beverage preparation machine (lid 38) that the insert is rigid or semi-rigid, and sufficient force is applied to a cap 77 to close the basket

to prevent undesired spilling (col. 6, lines 25-28) (*Regarding claim 18*); and the lower surface of the insert seals against the inlet of the brew head of the beverage preparation machine (col. 5, lines 38-41) (*Regarding claim 19*). Burrow does not teach that said closure mechanism (38) squeezes the insert.

However it would have been obvious to a person of ordinary skill in the art at the time of invention to extend the lid 38 to cover the whole top section of brew head 28 to prevent dust from getting in the cavity 32 and to improve the hygiene. Thus when pressure is applied to the extended lid to close the lid portion, cap 12 of the insert will be squeezed to seal against the receptacle of 12, and the lower surface of the insert 12 will seal against the inlet of brew head for hot water communication.

Regarding claim 20, Burrows in view of Cai does not teach that the upper part is in the form of a domed shell, however a doomed shell or other shape would be a design choice.

Regarding claim 21, Burrows teaches that the lower part of the insert is formed as one piece (brewing basket 12 is one piece in use).

Regarding claim 22, Burrows teaches that the lower part of the insert is formed from more than one piece (basket 12 is formed from more than one piece, 72, 82, 78, etc).

Regarding claim 23, Burrows teaches that the insert is disc-shaped (the upper cap 77 is disc-shaped).

Regarding claim 24, Burrows teaches that the insert is formed from plastic (col. 5, line 46).

Regarding claim 25, Burrows teaches that the inlet and outlet of the insert are coplanar.

3. Claims 26-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burrows et al. (US 6,634,281), hereafter Burrows, and in view of Halliday et al (US 2004/0197444), hereafter Halliday.

Regarding claim 26, Burrows teaches the limitations of claim 25, but does not teach that the insert further comprising an aperture for receiving on insertion of the insert in the beverage machine a window of a bar code reader or RFID reader of said machine.

In the same field of endeavor of beverage brewing machine, Halliday teaches an insert (255), and the insert further comprising an aperture (326) for receiving on insertion of the insert in the beverage machine a window of a bar code reader or RFID reader of said machine (par. 0196).

Thus it would have been obvious to a person of ordinary skill in the art at the time of invention to include an aperture for receiving a barcode reader to retrieve the operation information stored in the bar code of the cartridges, thus when cartridges are used in the basket 12, the brewing operations can be carried out accurately according to the stored information to ensure quality.

Regarding claim 27, since the location for the aperture to receive the bar code reader is dependent on the location of bar code, thus it can be located coplanar with the inlet and outlet of the insert.

Regarding claim 28, since the location of the inlet depends on the inlet of the brewer and the relative position of the insert and the brewer, thus the inlet of the insert can be located at or near a periphery of the insert and the outlet of the insert is located at a centre of the insert.

Regarding claim 29, Burrows teaches that the insert as claimed in claim 28, wherein, in use, flow through the insert is from the inlet to the outlet.

Regarding claim 30, Burrows teaches that the insert as claimed in claim 29 wherein, in use, flow through the insert is generally in an inward direction from the inlet to the outlet.

Regarding claim 31, Burrows teaches that the insert as claimed in claim 30, further comprising rotatable means (64 can rotate on 60) for rotatably attaching the insert to the beverage preparation machine.

Regarding claim 32, Burrows teaches that the insert as claimed in claim 31 wherein the rotatable means allows the insert to be rotated on closure of the closure mechanism into a horizontal orientation such that a lower surface of the insert is sealed against the inlet of the brew head.

Regarding claim 33, Burrows teaches that the insert as claimed in claim 32 wherein the rotatable means comprises one leg (64) which is attachable to, and rotatable about, one pivot points (62) of the brew head.

Regarding claims 34 and 35, Burrows teaches the limitations of claim 33, but does not teach that the insert that further comprising coding means for controlling operation of said beverage preparation machine.

In the same field of endeavor of beverage brewing machine, Halliday teaches an insert comprising coding means (Fig. 45, bar code 320, par. 0196) for controlling operation of said beverage preparation machine so that the beverage machine can be operated according to the operational parameters can be stored in the barcode to ensure the best quality of the beverages.

Thus it would have been obvious to a person of ordinary skill in the art at the time of invention to utilize in the insert of Burrow with bar code as taught by Halliday in order to store operation information in the barcode so to inform the user for the proper operation to ensure the best beverage quality.

Response to Arguments

Applicant's arguments have been fully considered but they are not persuasive.

Regarding claim 1, Applicants argue that the applied references fail to disclose or suggest an insert for use in a beverage preparation machine of a type comprising a brew head "such that, in use, water from the inlet of the brew head passes upwardly through the inlet of the insert into the brewing volume and such that beverage produced from the water and the quantity of beverage ingredients passes downwardly through the outlet of the insert" as recited in claim 1.

The examiner respectfully disagrees. Firstly, as rejected above, water is communicated **upwardly** into chamber 70 and the brewing volume through feed port 64 (inlet) (Burrows, col. 5, line 50-51); secondly, the beverage flows out through the holes of mash (outlet) downwardly because of **gravity**.

Applicants further argue "instead of the water being introduced from **the bottom of the brew volume** upwardly into the brew chamber through an inlet **formed in the bottom of the insert**, as claimed", applicants are arguing more than they claimed since the bolted part is not recited in claim 1.

Applicant's argument regarding claims 4-9 is moot in view of the new ground of rejection on claims 4-9.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JIANYING ATKISSON whose telephone number is (571)270-7740. The examiner can normally be reached on Mon-Friday. 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on (571)-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JIANYING ATKISSON/
Examiner, Art Unit 3742
8/6/10

/TU B HOANG/

Supervisory Patent Examiner, Art Unit 3742